

Region 8 RA/DRA Issue Paper: Ex. 5 - Deliberative Process **BLM's Interpretation/Implementation of Clean Air Act General Conformity Programs in the Upper Green River Basin Ozone Nonattainment Area**

The Region has an opportunity to comment on BLM's proposed actions in Wyoming's ozone nonattainment area. BLM proposes exempting categories of sources from Clean Air Act general conformity requirements based on an interpretation of the EPA's regulations that is inconsistent with our interpretation. This paper includes the following:

- Background on general conformity
- Chronology of key events in the Upper Green River Basin (UGRB)
- Key issues regarding one proposed project in the UGRB (the Naturally Pressurized Lance, or NPL, a 10-year and up to 3,500 natural gas wells project)
- Options for EPA to respond to BLM's request for comments on their General Conformity analysis for the NPL project.

A.) Background

General Conformity Background:

- 1.) The General Conformity program ensures that the actions conducted or sponsored by federal agencies in nonattainment and maintenance areas are consistent with state/tribal/federal air quality plans established to protect human health and the environment.
- 2.) Established under CAA section 176(c), the General Conformity rule at 40 CFR 93, subpart B, requires that federal agency projects "conform" to the state/tribal/federal implementation plan.
- 3.) Under the General Conformity rule, federal agencies must work with state, tribal, federal and local government in nonattainment and maintenance areas to ensure that emissions of air pollutants from planned federal activities do not:
 - (1) Cause new violations of the national ambient air quality standards (NAAQS);
 - (2) Increase the frequency or severity of NAAQS violations; or
 - (3) Delay timely attainment of the NAAQS or any interim milestone.
- 4.) The EPA's initial General Conformity rule was adopted in November 1993 and revised in April 2010. EPA regional and headquarters offices routinely work with other federal agencies to address questions that arise under the program.
- 5.) Federal agency actions that are subject to General Conformity must comply with any applicable General Conformity requirements prior to the federal agency providing financial assistance, licenses, permits, or approvals.

- 6.) We note that General Conformity requirements are separate from NEPA provisions. However, due to the similarity of information compiled and analyzed for a particular project's DEIS/FEIS, federal agencies often develop the conformity analysis information / determination as part of the NEPA process or in parallel to the NEPA process.

Wyoming General Conformity Background:

- 7.) In May 2012, the EPA designated the Wyoming Upper Green River Basin (UGRB) nonattainment for the 2008 8-hour ozone NAAQS of 75 parts per billion. A one-year grace period, before the general conformity requirements would apply, began when the nonattainment designations became effective in July 2012.
- 8.) The UGRB has rarely exceeded the 2008 ozone standard since being designated nonattainment in 2012. However, two exceedances of the 2008 and 2015 ozone standard occurred on January 18 & 19, 2017. While these were the first exceedances since 2011, it shows that the area still has the potential to produce high ozone under the right snow cover and weather conditions.
- 9.) Wyoming DEQ (WDEQ) revised the state's general conformity rule to incorporate the latest EPA general conformity rule revisions (as promulgated in April 2010). The Air Program approved Wyoming's general conformity SIP revision with a final rule that published on August 15, 2013; effective September 16, 2013.
- 10.) Our approval of the revisions to Wyoming's general conformity rule also included the provisions from EPA's rule that allow a federal agency to exempt the emissions from inclusion in a general conformity analysis and/or conformity determination from those stationary sources that obtain a major or minor NSR or PSD permit under an EPA approved state permit program. Wyoming has such an approved permit program. Sources covered by this exemption are those that meet the definition of stationary sources. We note that for the WDEQ permits issued for sources in the UGRB that additional requirements to obtain emissions offsets apply as provided in the WDEQ's 2008 Interim Permit Policy (although the policy is not part of the EPA-approved State Implementation Plan (SIP)).

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- 11.) The state explained their interpretation of the permit exemption provision by way of their January 31, 2014 letter, from Steve Dietrich (WDEQ) to Charis Tuers (BLM), which specifically states the WDEQ's position on this issue:

- *"Sources with permits issued under the authority of Wyoming's EPA approved new source review permitting program (WAQSR Chapter 6, Section 2) are exempt from a general conformity determination."*

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B.) Key Issues for the NPL Project:

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- 5.) The purpose of general conformity is to assist an area such as the UGRB to continue to attain the ozone NAAQS. There is no guiding SIP attainment plan demonstration for the UGRB nonattainment area nor is the state required by the CAA to provide one (ref. CAA section 182(a) requirements; areas classified as “Marginal”).

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C.) Potential Options for responding to the BLM-WY's request for comments on their Draft General Conformity analysis for the NPL Project:

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